

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOSE JAIRO GARCIA-GIRALDO,

Petitioner,

- against -

UNITED STATES,

Respondent.

JOHN G. KOELTL, District Judge:

The petitioner seeks relief under 28 U.S.C. § 2255 on the grounds of ineffective assistance of counsel, alleging that he was not told of the terms of the Government's February 15, 2006 plea offer and that he was threatened or coerced to plead guilty and to enter a subsequent sentencing agreement.

An evidentiary hearing on a § 2255 motion is appropriate "[u]nless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief." 28 U.S.C. § 2255(b). The Government argues that the petitioner's claims are conclusively refuted by the record.

However, the Court cannot decide the claims based on the record and there is no evidence from the petitioner's counsel as to what occurred.

Because there remain issues of fact, this Court cannot decide the § 2255 motion on the current record. Accordingly,

USDS SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: 07 Civ. 9861 (JGK)
DATE FILED: 8/28/09

07 Civ. 9861 (JGK)

MEMORANDUM OPINION AND
ORDER

this Court will appoint counsel to represent the petitioner and schedule an evidentiary hearing.

SO ORDERED.

Dated: New York, New York
August 22, 2009


John G. Koeltl
United States District Judge